

TIZZANO ①  
**CITATIONS** 1 of 6

Citations non-continuative role as employers:

- **Liv. HLY Chinese Cuisine, Inc. (2020)** **A-1**
- **Court:** U.S. District Court for the Southern District of New York
- **Summary:** In this case, the plaintiff sued for unpaid wages under the Fair Labor Standards Act (FLSA). The defendants argued that one of the named individuals was not an employer within the meaning of the FLSA. The court agreed, finding that the individual did not have sufficient control over employment practices.

The court considered factors like involvement in hiring or firing decisions, supervision and control over work schedules, determining the rate and method of payment, and maintaining employment records.

The individual lacked substantial involvement in these areas, leading the court to rule in favor of the defendant.

- **Citation:** Liv. HLY Chinese Cuisine, Inc., 2020 WL 2369636 (S.D.N.Y. 2020).

- **Irizarry v. Catsimatidis (2013)** **A-2**
- **Court:** U.S. Court of Appeals for the Second Circuit
- **Summary:** John Catsimatidis, the

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CEO of a grocery store chain, was sued for unpaid wages. The court found that while Catsimatidis had general oversight of the company, he did not have direct involvement in the day-to-day operations, such as setting employee schedules or determining specific pay rates. The court ruled that his involvement was more in the capacity of a high-level executive rather than as a direct employer with operational control. Consequently, he was not held liable under the FLSA.

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- **Citation:** Irizarry v. Catsimatidis, 722 F.3d 99 (2d Cir. 2013).

- **Moreau v. Air France** (2008)

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- **Court:** U.S. Court of Appeals for the

Ninth Circuit

- **Summary:** The plaintiffs, who were employed by various subcontractors providing services for Air France, sued for unpaid wages. The court examined whether Air France could be considered a joint employer. It found that Air France's role was limited to setting general performance standards and ensuring contract compliance. It did not exert direct control over the employment terms and conditions of the subcontractors' employees. Thus, the court ruled in favor of Air France.

- **Citation:** Moreau v. Air France, 356 F.3d 942 (9th Cir. 2004).

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- **Roman v. Jan-Pro Franchising Int'l,**

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- **Court:** U.S. Court of Appeals for the Ninth Circuit
- **Summary:** Workers for a franchisee sued Jan-Pro, the franchisor, for unpaid wages, alleging that Jan-Pro was their employer. The court applied the "economic realities" test and determined that Jan-Pro did not have significant control over the plaintiffs' employment conditions. It did not supervise or direct the workers, nor did it control their schedules or pay rates. This led the court to conclude that Jan-Pro was not liable as an employer.

- **Citation:** Roman v. Jan-Pro Franchising Int'l, Inc., 2021 WL

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6193475 (9th Cir. 2021).

- **Lam v. Univ. City Condo. Ass'n (2013)**

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- **Court:** U.S. District Court for the District of Massachusetts
- **Summary:** A worker sued for unpaid overtime, alleging that the condominium association was his employer. The court found that the association did not directly employ him; rather, he was hired by an independent contractor who managed the building. The association did not control the day-to-day activities or employment conditions of the worker, thus it was not considered an employer under the FLSA.

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- **Citation:** Lam v. Univ. City Condo. Ass'n, 2013 WL 4516108 (D. Mass. 2013).

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These cases illustrate that for an entity or individual to be deemed an employer under wage and hour laws, there must be a demonstrable level of control and involvement in the employment relationship. Courts often consider the totality of the circumstances, focusing on factors such as direct supervision, control over work conditions, and involvement in employment decisions.

**Cases driven by a financial motive:**

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- **Green v. Harbor Freight Tools USA, Inc. (2017)**

- **Court:** U.S. District Court for the District of Nevada

- **Summary:** The plaintiffs alleged unpaid overtime and missed meal breaks. However, the court found that the plaintiffs failed to provide credible evidence to support their claims. The employer argued that the plaintiffs had manufactured claims for financial gain. The court noted inconsistencies in the plaintiffs' testimonies and lack of corroborating evidence.

Consequently, the court granted

summary judgment in favor of Harbor Freight Tools, determining that the plaintiffs did not have a legitimate basis for their claims.

- **Citation:** Green v. Harbor Freight Tools USA, Inc., 888 F.3d 866 (9th Cir. 2017).
- **Yoshikawa v. City & County of**

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Honolulu (2004)

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- **Court:** U.S. Court of Appeals for the Ninth Circuit
- **Summary:** The plaintiffs, former employees, sued for unpaid overtime. The court found that the claims were brought forward without substantial evidence. The plaintiffs were found to have manipulated time records to create an appearance of working overtime that did not actually occur. The court concluded that the lawsuit was driven by the plaintiffs' desire for financial gain rather than legitimate grievances. This led to the dismissal of the claims against the City and County of Honolulu.

**Citation:** Yoshikawa v. City & County of Honolulu, 2004 WL 5116799 (9th Cir. 2004).

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- **Gomez v. Tyson Foods, Inc. (2010)**
- **Court:** U.S. District Court for the District of Nebraska
- **Summary:** In this case, workers at a Tyson Foods plant alleged unpaid wages for time spent donning and doffing protective gear. The court found that the plaintiffs' claims were exaggerated and not supported by the evidence. Tyson Foods provided substantial proof of their pay practices, and the court found that the plaintiffs had no solid foundation for their claims. The lawsuit was seen as an attempt to gain financially without merit, leading to a judgment in favor of Tyson Foods.
- **Citation:** Gomez v. Tyson Foods, Inc., 2010 WL 5068582 (D. Neb. 2010).
- **Wells v. General Dynamics Information Technology, Inc. (2020)**
- **Court:** U.S. District Court for the Eastern District of Virginia
- **Summary:** The plaintiffs sued for unpaid wages and overtime, claiming they were misclassified as exempt employees. However, the court found that the claims were unfounded. General Dynamics demonstrated that the plaintiffs were properly classified and compensated. The court also noted that the lawsuit appeared to be

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motivated more by financial gain rather than any genuine issues regarding wage and hour practices. As a result, the case was dismissed in favor of General Dynamics.

- **Citation:** Wells v. General Dynamics Information Technology, Inc., 2020 WL 2571791 (E.D. Va. 2020).
- **Gray v. Powers (2012)**
- **Court:** U.S. Court of Appeals for the Fifth Circuit
- **Summary:** Employees of a nightclub sued for unpaid wages, alleging they were not paid for all hours worked. The court found significant evidence suggesting that the claims were exaggerated and that the lawsuit was driven by a financial motive rather than legitimate grievances. The employer provided credible records and testimony to refute the plaintiffs' claims, leading the court to rule in favor of the employer.
- **Citation:** Gray v. Powers, 673 F.3d 352 (5th Cir. 2012).

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In these cases, courts carefully examined the evidence and motivations behind the lawsuits. Where plaintiffs could not substantiate their claims or were found to have ulterior financial motives, courts have been willing to dismiss the cases ~~in favor of plaintiffs~~

**TIZZANO** **EXHIBIT A**

**CERTIFICATE OF INCORPORATION**

**OF**

**ROSSO UPTOWN, LTD.**

**Under Section 402 of the Business Corporation Law**

**CONT** →

**1 OF 2**

The undersigned, a natural person of the age of eighteen years or over, desiring to form a corporation pursuant to the provisions of the Business Corporation Law of the State of New York, hereby certifies as follows:

**FIRST**: The name of the corporation is:

**ROSSO UPTOWN, LTD.**

**SECOND**: The purpose for which it is formed is as follows:

To engage in any lawful act or activity for which corporations may be formed under the Business Corporation Law provided that the corporation is not formed to engage in any act or activity which requires the consent or approval of any state official, department, board agency or other body, without such approval or consent first being obtained.

For the accomplishment of the aforesaid purposes, and in furtherance thereof, the corporation shall have and may exercise all of the powers conferred by the Business Corporation Law upon corporations formed thereunder, subject to any limitations contained in Article 2 of said law or in accordance with the provisions of any other statute of the State of New York.

**THIRD**: The office of the corporation in the State of New York is to be located in the County of Nassau.

**FOURTH**: The aggregate number of shares which the corporation shall have the authority to issue is 200 no par value.

**TIZZANO**  
**EXHIBIT A**


**FIFTH:** The Secretary of State is designated as agent of the corporation upon whom process against the corporation may be served, and the address to which the Secretary of State shall mail a copy of any process against the corporation served upon him is:

c/o Massimo Gammella  
664 Flanders Drive  
Valley Stream, NY 11581

**SIXTH:** A director of the corporation shall not be personally liable to the corporation or its shareholders for damages for any breach of duty in such capacity except for liability if a judgment or other final adjudication adverse to a director establishes that his or her acts or omissions were in bad faith or involved intentional misconduct or a knowing violation of law or that the director personally gained in fact a financial profit or other advantage to which he or she was not legally entitled or that the director's acts violated Section 719 of the Business Corporation Law; or liability for any act or omission prior to the adoption of this provision.

IN WITNESS WHEREOF, I hereunto sign my name and affirm that the statements made herein are true under the penalties of perjury.

Dated: January 15, 2013

  
\_\_\_\_\_  
Scott J. Schuster, Incorporator  
283 Washington Avenue  
Albany, NY 12206



N. Y. S. DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS AND STATE RECORDS

ALBANY, NY 12231-0001

## FILING RECEIPT

=====

ENTITY NAME: ROSSO UPTOWN, LTD.

DOCUMENT TYPE: INCORPORATION (DOM. BUSINESS)

COUNTY: NASS

=====

FILED: 01/15/2013 DURATION: PERPETUAL CASH#: 130115000772 FILM #: 130115000721  
DOS ID: 4346247

## FILER:

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SERVICO INC.  
P.O. BOX 871

## EXIST DATE

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01/15/2013

ALBANY, NY 12201

## ADDRESS FOR PROCESS:

-----

C/O MASSIMO GAMMELLA  
664 FLANDERS DRIVE  
VALLEY STREAM, NY 11581

## REGISTERED AGENT:

-----

STOCK: 200 NPV

**TIZIANO**  
**EXHIBIT**

**B**

The corporation is required to file a Biennial Statement with the Department of State every two years pursuant to Business Corporation Law Section 408. Notification that the biennial statement is due will only be made via email. Please go to [www.email.ebiennial.dos.ny.gov](http://www.email.ebiennial.dos.ny.gov) to provide an email address to receive an email notification when the Biennial Statement is due.

=====

SERVICE COMPANY: SERVICO - 35

SERVICE CODE: 35 \*

<b>FEEs</b>	<b>160.00</b>
-----	-----
<b>FILING</b>	<b>125.00</b>
<b>TAX</b>	<b>10.00</b>
<b>CERT</b>	<b>0.00</b>
<b>COPIES</b>	<b>0.00</b>
<b>HANDLING</b>	<b>25.00</b>

<b>PAYMENTS</b>	<b>160.00</b>
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<b>CASH</b>	<b>0.00</b>
<b>CHECK</b>	<b>0.00</b>
<b>CHARGE</b>	<b>0.00</b>
<b>DRAWDOWN</b>	<b>160.00</b>
<b>OPAL</b>	<b>0.00</b>
<b>REFUND</b>	<b>0.00</b>

=====

48020

DOS-1025 (04/2007)

EXHIBIT 15

671114

OMB No. 1545-0123

2014

For calendar year 2014, or tax  
year beginning \_\_\_\_\_  
ending \_\_\_\_\_

**Shareholder's Share of Income, Deductions, Credits, etc.** ▶ See back of form and separate instructions.

## Part I: Information About the Corporation

A Corporation's employer identification number  
**46-1806292**

B Corporation's name, address, city, state, and ZIP code  
ROSSO UPTOWN LTD

52 MAIN STREET  
Port Washington NY 11050-2952

C IRS Center where corporation filed return  
e-file

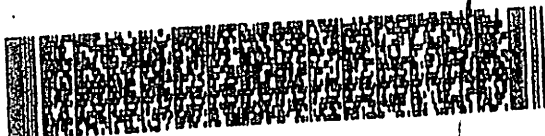
**Part II** Information About the Shareholder

D Shareholder's identifying number  
[REDACTED] 5941

Shareholder's name, address, city, state, and ZIP code  
**MASSIMO GAMMELLA**  
**664 FLANDERS DR**

VALLEY STREAM NY 11581

F Shareholder's percentage of stock ownership for tax year ..... 100.000000 %



For IRS Use Only

100% owner

**Part III Shareholder's Share of Current Year Income Deductions, Credits, and Other Items**

Part I. Income		Part II. Credits	
1	Ordinary business income (loss) <b>9,119</b>	13	Credits
2	Net rental real estate income (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss)		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured section 1250 gain		
9	Net section 1231 gain (loss)		
10	Other income (loss)	15	Alternative minimum tax (AMT) items
11	Section 179 deduction	16	Items affecting shareholder basis
12	Other deductions		
		17	Other information

\* See attached statement for additional information.

Schedule K-1 (Form 1120S) 2014

For Paperwork Reduction Act Notice, see Instructions for Form 1120S. IRS.gov/form1120s

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EXHIBIT

Form 2553

(Rev. December 2012)

Department of the Treasury  
Internal Revenue ServiceFiled Pursuant to Rev. Proc. 2013-30  
Election by a Small Business Corporation  
(Under section 1363 of the Internal Revenue Code)

▶ See Parts II and III on page 3.

▶ You can fax this form to the IRS (see separate instructions).

▶ Information about Form 2553 and its separate instructions is at [www.irs.gov/form2553](http://www.irs.gov/form2553).

OMB No. 1545-0047

**Note.** This election to be an S corporation can be accepted only if all the tests are met under Who May Elect in the instructions, all shareholders have signed the consent statement, an officer has signed below, and the exact name and address of the corporation (entity) and other required firm information have been provided.

## Part I Election Information

Type  
or Print

Name (see instructions)

ROSSO UPTOWN LTD

Number, street, and room or suite no. (if a R.O. box, see instructions)

52 MAIN STREET

City or town, state, and ZIP code

Port Washington

NY 11050-2952

A Employer identification number

46-1806292

B Date incorporated

01/15/2013

C State of incorporation

NY

D Check the applicable box(es) if the corporation (entity), after searching for the EIN shown in A above, changed its name or address. Form 1128 ▶ 01/15/13

E Election is to be effective for tax year beginning (month, day, year) (see instructions) .....  
Caution. A corporation (entity) making the election for its first tax year in existence will usually enter the beginning date of a short tax year that begins on a date other than January 1.

F Selected tax year:

- (1) ☒ Calendar year  
(2) ☐ Fiscal year ending (month and day) ▶ .....  
(3) ☐ 52-53-week year ending with reference to the month of December  
(4) ☐ 53-54-week year ending with reference to the month of ▶ .....  
If box (2) or (4) is checked, complete Part II

G If more than 100 shareholders are listed for Item J (see page 2), check this box if treating members of a family as one shareholder (see instructions) (see part 2 under Who May Elect in the instructions) .....  
H Name and title of officer or legal representative who the IRS may call for more information

MASSIMO GAMBELLA

PRESIDENT

I Telephone number of officer or legal representative  
516-633-7977

If this S corporation election is being filed late, I declare that I had reasonable cause for not filing Form 2553 timely, and if this late election is made by an entity eligible to elect to be treated as a corporation, I declare that I also had reasonable cause for not filing an entity classification election timely and that the representations listed in Part IV are true. See below for my explanation of the reasons the election or elections were not made on time and a description of my diligent efforts to correct the mistake upon its discovery (see instructions).

Election was filed for both NYS and the IRS.

For some reason there was an administrative error and the original 2553 was not recorded.

Sign  
Here

Under penalty of perjury, I declare that I have prepared this election, including accompanying documents, and, to the best of my knowledge and belief, the contents are true, correct, and complete.

PRESIDENT AND CEO

Title

Date

Form 2553 (Rev. 12-01-12)

For Paperwork Reduction Act Notice, see separate instructions.

DAA

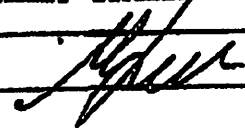
MASSIMO GAMBELLA

**TITANO**Form 2853 (Rev. 12-2012) **ROSSO OPTICS LTD**

46-1806292

Page 1

**Part I Election Information (continued) Note: If you need more rows, use additional copies of page 2.**

Name and address of each shareholder or owner (including any address to which dividends should be sent)	L Stock owned or percentage of ownership (see instructions)		M Social security number or employer identification number (see instructions)	N Shareholder's tax year ends (month and day)
Shareholder's Consent Statement Under penalty of perjury, I declare that I am not the owner of the above-named corporation (entity) to be an S corporation under section 1361(b)(1) and that I have examined the consent statement, including accompanying documents, and, to the best of my knowledge and belief, the election contains all the required facts relating to the election, and such facts are true, correct, and complete. I understand my consent to this election may not be withdrawn after the corporation (entity) has made a valid election. If seeking relief for a late filed election, I also declare under penalty of perjury that I have reported my income on all related returns consistent with the S corporation election for the year for which the election should have been filed (see beginning date entered on line 1) and for all subsequent years.	Number of shares or percentage of ownership	Date(s) acquired		
<b>MASSIMO GAMMELLA</b> <b>664 FLANDERS DR</b> <b>VALLEY STREAM, NY 11581</b> 	100.000	01/15/13	[REDACTED] 5941	12/31

**EXHIBIT D****2F2**

↑  
100% owner

Page 2853 (Rev. 12-2012)

TITAN

EXHIBIT

E

Form **4506**

(November 2021)

Department of the Treasury  
Internal Revenue Service**Request for Copy of Tax Return**

- ▶ Do not sign this form unless all applicable lines have been completed.  
 ▶ Request may be rejected if the form is incomplete or illegible.  
 ▶ For more information about Form 4506, visit [www.irs.gov/form4506](http://www.irs.gov/form4506).

OMB No. 1545-0429

**Tip: Get faster service:** Online at [www.irs.gov](http://www.irs.gov), Get Your Tax Record (Get Transcript) or by calling 1-800-833-8948 for specialized assistance. We have teams available to assist. **Note:** Taxpayers may register to use Get Transcript to view, print, or download the following transcript types: **Tax Return Transcript** (shows most line items including Adjusted Gross Income (AGI) from your original Form 1040-series tax return as filed, along with any forms and schedules), **Tax Account Transcript** (shows basic data such as return type, marital status, AGI, taxable income and all payment types), **Record of Account Transcript** (combines the tax return and tax account transcripts into one complete transcript), **Wage and Income Transcript** (shows data from information returns we receive such as Forms W-2, 1099, 1098, 1099 and Form 5498), and **Verification of Non-filing Letter** (provides proof that the IRS has no record of a filed Form 1040-series tax return for the year you request).

<b>1a</b> Name shown on tax return. If a joint return, enter the name shown first.  ROSSO UPTOWN LTD	<b>1b</b> First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)  42-1806292
<b>2a</b> If a joint return, enter spouse's name shown on tax return.	<b>2b</b> Second social security number or individual taxpayer identification number if joint tax return
<b>3</b> Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)  ROSSO UPTOWN LTD, 52 MAIN STREET, PORT WASHINGTON, NY 11050-2952	
<b>4</b> Previous address shown on the last return filed if different from line 3 (see instructions)	

**5** If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.

MOSER LAW FIRM PC, 5 E MAIN STREET, HUNTINGTON, NY 11743

**Caution:** If the tax return is being sent to the third party, ensure that lines 5 through 7 are completed before signing. (see instructions).

**6** Tax return requested. Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ▶ 1120 and all attachments

**Note:** If the copies must be certified for court or administrative proceedings, check here ☒

**7** Year or period requested. Enter the ending date of the tax year or period using the mm/dd/yyyy format (see instructions).

12 / 31 / 2015      12 / 31 / 2016      12 / 31 / 2017      12 / 31 / 2018  
 (CLOSED) 12 / 31 / 2019      (CLOSED) 12 / 31 / 2020      \_\_\_\_ / \_\_\_\_ / \_\_\_\_      \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**8** Fee. There is a \$43 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN, ITIN, or EIN and "Form 4506 request" on your check or money order.

<b>a</b> Cost for each return	\$ 43.00
<b>b</b> Number of returns requested on line 7	6
<b>c</b> Total cost. Multiply line 8a by line 8b	\$ 258.00

**9** If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here ☐

**Caution:** Do not sign this form unless all applicable lines have been completed.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, at least one spouse must sign. If signed by a corporate officer, 1 percent or more shareholder, partner, managing member, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. **Note:** This form must be received by IRS within 120 days of the signature date.

☒ **Signatory attests that he/she has read the attestation clause and upon so reading declares that he/she has the authority to sign the Form 4506. See instructions.**

Phone number of taxpayer on line 1a or 2a

**Sign Here**

Signature (see instructions)

7/31/2022

Date

MASSIMO GAMMELLA  
Print/Type name

PRESIDENT

Title (if line 1a above is a corporation, partnership, estate, or trust)

Spouse's signature

Date

Print/Type name

13. Defendant Michael Tizzano is a natural person who resides in Nassau County, New York.

14. Upon information and belief, Michael Tizzano (Tizzano), at all times relevant, was a shareholder of Rosso Uptown, Ltd.

15. Upon information and belief, Defendant Tizzano had the power to hire and fire the Plaintiffs, supervised, and controlled the work schedules and conditions of their employment, determined the rate and method of their pay, and maintained records of their employment.

16. Upon information and belief, Defendant Tizzano exercised sufficient operational control over Rosso Uptown, Ltd. to be deemed Plaintiffs' employer.

#### FACTUAL ALLEGATIONS

17. At relevant times, Defendant Rosso Uptown, Ltd. was an employer as defined under the FLSA and NYLL.

18. At relevant times, Defendant Gammella was an employer as defined under the FLSA and NYLL.

19. At relevant times, Defendant Tizzano was an employer as defined under the FLSA and NYLL.

20. At all relevant times, Defendant Rosso Uptown, Inc. has been an entity engaged in commerce as defined by the FLSA. 29 U.S.C. §§ 201 et seq.

21. For the calendar year 2014, Rosso Uptown, Ltd. had an annual dollar volume of sales or business done of at least \$500,000.

22. For the calendar year 2015, Rosso Uptown, Ltd. had an annual dollar volume of sales or business done of at least \$500,000.

23. For the calendar year 2016, Rosso Uptown, Ltd. had an annual dollar volume of sales or business done of at least \$500,000.

TIZZANO  
EXHIBIT  
F

1 of 2



24. For the calendar year 2017, Rosso Uptown, Ltd. had an annual dollar volume of sales or business done of at least \$500,000.

NO

TIZIANO

25. For the calendar year 2018, Rosso Uptown, Ltd. had an annual dollar volume of sales or business done of at least \$500,000.

NO

EXHIBIT

26. At all relevant times, the Rosso Uptown, Ltd. operated an eating or drinking place that prepared and offered food or beverages for human consumption on its premises.

F

*Santos Hernandez*

27. At all relevant times, Santos Hernandez was an employee of and employed by the Defendants under the FLSA and NYLL.

2 of 2

28. More specifically, Mr. Hernandez was employed by Defendants from on or about March 20, 2016 until on or about July 1, 2018.

29. Mr. Hernandez worked six days per week.

30. Mr. Hernandez's scheduled hours were from 11 am to 10 pm on Tuesday, Wednesday, and Thursday, from 11 am until 11 pm on Friday and Saturday, and from 12 pm to 10 pm on Sunday. Mr. Hernandez took a lunch break each day from 3pm to 4 pm.

31. On virtually every week during his employment with the defendants, Mr. Hernandez worked at least the regularly scheduled hours (61 hours).

32. Mr. Hernandez worked as a dishwasher and food preparer.

33. From on or about March 20, 2016 until on or about May 31, 2017, Mr. Hernandez was paid a weekly salary, in cash, of \$400.00.

34. From on or about May 31, 2017 until on or about July 1, 2018, Mr. Hernandez was paid a weekly salary of \$475, \$350 of which was paid by check, and \$125 of which was paid in cash.

35. Mr. Hernandez was not compensated at the New York State Minimum wage for all

**TIZZANO**  
**EXHIBIT G**

*The Fair Labor Standards Act (FLSA): An Overview*

### 1989 Amendments

In 1989, FLSA coverage was extended to enterprises with annual sales of at least \$500,000. The amendments also repealed the retail exemption, under which employees of almost all small retail enterprises were exempt from the minimum wage and overtime rates.

### The 1996 Small Business Job Protection Act

In 1996, Congress exempted certain computer professionals from minimum wage and overtime regulations.<sup>92</sup> The 1996 amendments also brought within the FLSA's minimum wage coverage all government employees employed as of April 1, 1996.

1 of 2

### The 2007 Increases in the Basic Minimum Wage

On May 25, 2007, President George W. Bush signed into law a supplemental appropriations bill titled the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007" (P.L. 110-28). Title VIII of the act, "Fair Minimum Wage and Tax Relief," increased the basic federal minimum wage from \$5.15 to \$5.85 an hour effective July 2007, from \$5.85 to \$6.55 an hour effective July 2008, and from \$6.55 to \$7.25 an hour effective July 2009.

### Break Time for Nursing Mothers

The 2010 Patient Protection and Affordable Care Act (PPACA) amended the FLSA to require covered employers to provide reasonable break time to nonexempt employees to express breast milk for a nursing child.

**Table A-1. Federal Minimum Wage Laws**

Public Law and Date Enacted	Wage Rate	Effective Date of Wage Rate
P.L. 75-718, enacted June 25, 1938	\$0.25 0.30 0.40	October 1938 October 1939 October 1945
P.L. 81-393, enacted October 26, 1949	0.75	January 1950
P.L. 84-381, enacted August 12, 1955	1.00	March 1956
P.L. 87-30, enacted May 5, 1961	1.15 1.25	September 1961 September 1963
P.L. 89-601, enacted September 23, 1966	1.40 1.60	February 1967 February 1968
P.L. 93-259, enacted April 8, 1974	2.00 2.10 2.30	May 1974 January 1975 January 1976
P.L. 95-151, enacted November 1, 1977	2.65 2.90 3.10 3.35	January 1978 January 1979 January 1980 January 1981
P.L. 101-157, enacted November 17, 1989	3.80 4.25	April 1990 April 1991

2



TIZAN EXHIBIT  
GThe Fair Labor Standards Act (FLSA): An Overview

by encouraging employers to hire more workers, rather than requiring current employees to work more than 40 hours per week and pay the premium overtime rate.

Finally, under the FLSA Congress set certain conditions under which children could be employed. Not only was oppressive child labor considered immoral, as children often worked at the cost of their own health and education, but Congress also believed that the lower wages generally earned by children drove down the wages of adult workers.<sup>6</sup>

The FLSA extends minimum wage, overtime pay, and child labor protections to individuals "employed by an employer."<sup>7</sup> Congress has also "exempted" certain employers and employees from all or parts of the FLSA. For example, exemptions were provided to executive, administrative, or professional (EAP) employees; individuals employed at retail stores that did not have interstate operations; and agricultural employees. Additionally, the child labor provisions did not apply to children employed in the motion picture or theater industries.<sup>8</sup>

## Who Is Covered by the FLSA?

The FLSA covers employees and enterprises engaged in interstate commerce. An enterprise is covered if it has annual sales or business done of at least \$500,000.<sup>9</sup> Regardless of the dollar volume of business, the act applies to hospitals; institutions primarily engaged in the care of the sick, aged, mentally ill, or disabled who reside on the premises; schools for children who are mentally or physically disabled or gifted; federal, state, and local governments; and preschools, elementary and secondary schools, and institutions of higher education.<sup>10</sup>

Although enterprises that have *less than* \$500,000 in annual sales or business done are not covered by the FLSA, employees of these enterprises may be covered if they are individually engaged in interstate commerce. These employees may travel to other states for work, make phone calls or send emails to persons in other states, or handle records that are involved in interstate transactions.<sup>11</sup>

The \$500,000 enterprise threshold has not been raised since it was enacted in 1989. Employers are required to administer dual enterprise and individual tests to determine if individual employees are covered by the act. That is, although an enterprise may not be covered if it has less than \$500,000 in annual sales or business done, employees of the enterprise may be covered if they are individually engaged in interstate commerce.

The FLSA covers most, but not all, private and public sector employees. Persons who are not covered by the FLSA include the following:

<sup>6</sup> Although Congress articulated both social and economic reasons for regulating child labor, some commentators noted that President Roosevelt believed the addition of child labor provisions in the FLSA would make wage and hour provisions more palatable to Congress, thereby making FLSA enactment easier. *Ibid.*

<sup>7</sup> *Fair Labor Standards Act of 1938*, ch. 676, §§6, 7, 12, 52 Stat. 1060.

<sup>8</sup> *Ibid.*, at 1067-1068.

<sup>9</sup> The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least \$500,000. Owners of rental properties are covered if they collect at least \$500,000 annually in rent. 29 C.F.R. §§779.258-779.259.

<sup>10</sup> 29 U.S.C. §203(s)(1).

<sup>11</sup> Department of Labor (DOL), *Coverage Under the Fair Labor Standards Act*, available at <https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage>. (Hereinafter cited as DOL, *Coverage Under the Fair Labor Standards Act*.)

**TITAN**  
**EXHIBIT**  
**"H"**



### Business Signature Card

ACCOUNT TITLE ("DEPOSITOR") (DBA(s) on the following page(s) if applicable)  
 ROSSO UPTOWN LTD.

ACCOUNT NUMBER 168033950  
 ACCOUNT TYPE Chase BusinessSelect Checking  
 TAXPAYER ID NUMBER 46-1808282  
 DATE OPENED 01/18/2013  
 FORM OF BUSINESS S-Corporation  
 ISSUED BY JPMorgan Chase Bank, N.A. ( 802 )  
 Port Washington - 228  
 NICHOLAS LUPI  
 (516) 844-2842  
 07/01/2024

BUSINESS ADDRESS  
 684 FLANDERS DR  
 VALLEY STREAM, NY 11681-3044  
 United States/US Territories

1 of 3

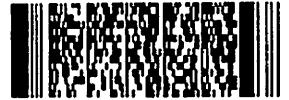
PRIMARY ID TYPE	PRIMARY ID NUMBER	ISSUER	ISSUANCE DATE	EXPIRATION DATE
Website Documentation	4348247	NY	01/15/2013	
SECONDARY ID TYPE	SECONDARY ID NUMBER	ISSUER	ISSUANCE DATE	EXPIRATION DATE
Assumed Name ID	20160222003	NYS	02/22/2016	

**ACKNOWLEDGEMENT** - By signing this Signature Card, the Depositor applies to open a deposit account at JPMorgan Chase Bank, N.A. (the "Bank"). The Depositor represents and warrants that (i) the signatures appearing below are genuine or facsimile signatures of the person(s) authorized to transact business and (ii) all necessary actions or formalities, where necessary, have been taken to authorize the named person(s) to so act. The Bank is entitled to rely on the authority of the named person(s) until written revocation of such authority is received by the Bank. The Depositor certifies that the information provided to the Bank is true to the best of its knowledge and authorizes the Bank, at its discretion, to obtain credit reports on the Depositor. The Depositor acknowledges receipt of the Bank's Deposit Account Agreement or other applicable account agreement, which include all provisions that apply to this deposit account, and other agreements and service terms for account analysis and other treasury management services if applicable, and agree to be bound by the terms and conditions contained therein as amended from time to time.

\*\* When you give us your mobile phone number, we have your permission to contact you at that number about all your Chase or J.P. Morgan accounts. Your consent allows us to use text messaging, artificial or prerecorded voice messages and automatic dialing technology for informational and account service calls, but not for telemarketing or sales calls. It may include contact from companies working on our behalf to service your accounts. Message and data rates may apply. You may contact us anytime to change these preferences.

	PRINTED NAME	TELEPHONE NUMBER	TAXPAYER ID #	TITLE	DATE	SIGNATURE
1)	MASSIMO GAMMELLA			Signer		
2)						
3)						
4)						





**BUSINESS DEPOSITORY CERTIFICATE (Corporation)**

**CHASE** 

ACCOUNT NO. 169033950

**TIZIANO**

**EXHIBIT H**

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

DISTRIBUTION: 1) National Account Services 2) Customer

JPMorgan Chase Bank, N.A. Member FDIC



**BUSINESS DEPOSITORY CERTIFICATE (Corporation)**NEW ☒ CHANGE**CHASE**

ACCOUNT NO.  
169033950  
ACCOUNT TITLE (DBA(s) on the following page(s) if applicable)  
ROSSO UPTOWN LTD.

BANK NAME/NUMBER  
JPMorgan Chase Bank, N.A. ( 802 )  
BRANCH NAME AND NO.  
Port Washington - 228

DATE  
07/01/2024  
PREPARED BY  
NICHOLAS LUPI  
PHONE NO.  
(516) 944-2942

BUSINESS ADDRESS  
664 FLANDERS DR  
VALLEY STREAM, NY 11581-3044  
United States/US Territories

TAXPAYER ID NO.  
46-1806292

PRODUCT TYPE  
Chase BusinessSelect Checking

**TIZZANO**  
**EXHIBIT H**

Legal Name of Organization: **ROSSO UPTOWN, LTD.**

(the "Organization")

State of Organization: **NY**

The individual(s) signing this Certificate hereby certifies to JPMorgan Chase Bank, N.A. (the "Bank") as follows:

- the Organization is a corporation of the type identified above, duly organized under the laws of the state of organization listed above;
- the individual signing this Certificate is the Secretary, Assistant Secretary, Acting Secretary, or President, as listed below, of the Organization; and
- the Organization has authorized all actions and agreements described in this Certificate in accordance with all requirements of law and of Organization's organizational documents and bylaws, if any, and the authorizations are now in full force and effect.

**Account Opening and Contractual Authorization**

Any of the people listed below ("Authorized Persons"), acting alone, may:

- Open or close one or more accounts with the Bank at any time, subject to the Bank's deposit account agreement;
- Act on behalf of the Organization in any matter involving any of the Organization's depository accounts at the Bank;
- Sign all agreements or other documents relating to any depository accounts or other business of the Organization. These agreements and other documents include but are not limited to funds transfer agreements, agreements for automated clearinghouse services, agreements for online services, and safe deposit agreements.

**Deposit and Withdrawal Authorization**

Each Authorized Person may deposit or withdraw the Organization's funds. Each Authorized Person may sign any and all checks, drafts, and orders drawn against any account of the Organization at the Bank, and may give instructions for account transactions without a signature, such as those initiated via electronic debit, payment, wire transfer, or other withdrawal of funds by computer, electronic or other means. The Bank is authorized to pay any checks or other transactions authorized by the Organization, even if doing so causes or increases an overdraft. Each Authorized Person may endorse for cash, collection, deposit, or negotiation any checks, drafts, notes, bills of exchange, or certificates of deposit, and order the payment or transfer of money between accounts at the Bank and other banks. Endorsements "for deposit" may be written or stamped. The Bank may accept any instrument for deposit to any depository account of the Organization without endorsement or may supply the endorsement of the Organization. The Bank is authorized to pay all checks, drafts, and orders when signed, endorsed, or authorized by any Authorized Person without inquiry as to the circumstances of issue or disposition of the proceeds and regardless of to whom such instruments are payable or endorsed, including those payable to or endorsed to the Authorized Person.

Print Name  
**MASSIMO GAMMELLA**

Title  
Signer

Facsimile Signatures

SIGNER(S) TO BE ADDED LATER

**Facsimile Signature Authorization**

The Bank is authorized and directed to pay checks bearing any form of facsimile or computer-generated signature. If the Organization either uses or provides a signature card authorizing any facsimile or computer-generated signature, the Organization will be solely responsible for any check bearing a similar signature.

**Further Authorizations**

The Secretary, Assistant Secretary, Acting Secretary or President of the Organization, acting alone, is authorized to certify to the Bank the name, title, specimen signature and facsimile signature of any additional Authorized Person, or to instruct the Bank to remove any Authorized Person. The Bank may rely on this Certificate until it receives express written notice of a change or revocation.

FOR THE PRECEDING PURPOSES, the undersigned has signed his/her name(s) on the date indicated above.

Exemption from FATCA reporting code (if any) \_\_\_\_ [According to the IRS Form W-9 instructions, if you are only submitting this form for an account you hold in the United States, you may leave this field blank.]

**CERTIFICATION**

The undersigned certifies under penalties of perjury that (1) the Organization's Taxpayer Identification Number shown above is correct, and (2) the Organization is not subject to backup withholding because: (a) the Organization is exempt from backup withholding, or (b) the Organization has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified the Organization that it is no longer subject to backup withholding, and (3) the Organization is a U.S. citizen or other U.S. person (as defined in the Form W-9 Instructions), and (4) the FATCA code(s) entered on this form (if any) indicating that the Organization is exempt from FATCA reporting is correct.

If the IRS has notified the Organization that it is subject to backup withholding due to underreporting interest or dividends on its tax return, cross out item 2 above.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Signature: Signature on File

Date: 07/01/2024

Title: President

Printed Name: MASSIMO GAMMELLA

DISTRIBUTION: 1) National Account Services 2) Customer

JPMorgan Chase Bank, N.A. Member FDIC



<KCapellupo@nassaucountyny.gov>

Date: 6/25/24 9:05 AM (GMT-05:00)

To: michaelcapri

<michaelcapri@optonline.net>

Cc: fmtc <fmtc@nassaucountyny.gov>

Subject: RE: Food Manager Training

Certificate - Inquiry

TIZZANO  
EXHIBIT  
I

Good Morning Michael,

1 OF 2

I can confirm that any individual may hold a Nassau County Food Manager Training Certificate – the course and certification is not limited to the owner of a food service establishment.

The administrator of the food manager training program will reply to you regarding the other information you requested.

Certificate – the course and certification  
is not limited to the owner of a food  
service establishment.

The administrator of the food manager  
training program will reply to you  
regarding the other information you  
requested.

TIZIANO  
EXHIBIT

I

Kind regards,

2 of 2

Krista Capellupo, MPH

Nassau County Department of Health

Office of Food Protection

Office of Recreational Facilities

200 County Seat Dr, Mineola, NY 11501



app.nassaucountyny.gov/health/fmtc/faq.php



Nextcl... TutuRosso UI3 https://login.nation... My Account Login Sign In Single Sign-On - S... How to:

Does my restaurant/establishment need a certified manager?

How long does the online course take?

How much does the course cost?

How many days is the in-person class?

How many certificates does my establishment need?

**TIZIANO  
EXHIBIT**

**L**

If the establishment is open for more than 12 hours per day, then a second manager must be certified. The more certified managers that an establishment has, the more protected that business is.

How long does certification last?

What if I took food safety training elsewhere such as NYC, Suffolk County or ServSafe?

What if my employment changes?

Who is eligible for the renewal class?

Do I have to take an exam for the online course?

Where should I keep the certificate?



# RE: Food Manager Training Certificate - Inquiry

June 28, 2024 4:08 PM

fmtc to 3 recipients

[Details](#)

Hello

I do see a Michael Tizzano in our system  
linked to Pepe Rosso 24 but no certificate  
number information. This could be an  
issue with the database being cleaned out  
but the facility is linked to your name.

TIZZANO  
EXHIBIT 'M'

**Nimmy Tsouratakis, MPH**

Training Supervisor

Program Coordinator for Food Managers

Training Certification Program

**Nassau County Department of Health**

Office of Food Protection

200 County Seat Dr.

Mineola NY 11501



← Found the article; here is affidavit

June 9, 2024 6:15 PM

joan reminick

Details

In August of 2014, when I was a writer at Newsday, I neither asked for nor saw legal documents attesting that Michael Tizzano was an owner at Rosso Uptown in Port Washington. My guess is that I assumed he was, since the name of the place is so similar to the one where he was and remains an owner. This is to the best of my knowledge.

Joan Reminick

TIZZANO  
EXHIBIT 'N'